

NEW JERSEY HIGHWAY AUTHORITY

Contracts for Architectural, Engineering and Land Surveying Services

New Rule: N.J.A.C. 19:8-15.1

Authorized By: New Jersey Highway Authority, Lewis B. Thurston III, Executive Director

Authority: N.J.S.A. 27:23-1 and 52:34-9.1, specifically 52:34-9.3 and 9.5

Proposal Number: PRN 1999-328

Summary

On January 19, 1998, the New Jersey Legislature P.L. 1997, c.399, codified as N.J.S.A. 52:34-9.1 et seq., which pertains to the procurement of architectural, engineering and land surveying professionals by State agencies. For purposes of the new law, State agency includes entities such as the New Jersey Highway Authority (“Authority”). The new law applies to contracts for architectural, engineering and land surveying services which are in excess of \$25,000, and does not preclude an agency from using procurement processes other than those prescribed by the agency if those processes have been approved by the Federal government or other State statute or if an emergency has been declared by the agency head, which is the Executive Director of the Authority. In early 1999, the New Jersey Legislature, enacted S.1438, codified at N.J.S.A. 52:34.9.1 et seq., extending the effective date to August 1, 1999.

The new law provides that, “It is the policy of this State that State contracts for architectural, engineering and land surveying services shall be publicly announced prior to being awarded and that contracts for these services shall be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable compensation.” N.J.S.A. 52:34-9.1. The new law requires State agencies that intend or expect to make, negotiate or award a contract or agreement for the procurement of professional architectural, engineering or land surveying services adopt rules outlining the criteria which it will use in the professional firm selection process. N.J.S.A. 52:34-9.5c. The rule herein outlines the criteria the Authority is to use in the selection of professional firms under the procurement procedures outlined under N.J.S.A. 52:34-9.1 et seq.

The new rule establishes a procedure for the prequalification of firms interested in providing architectural, engineering and land surveying services for the Authority. The new rule requires that all firms complete and file a Professional Service Prequalification Questionnaire (“PSPQ”) with the Authority that will identify the types of projects for which the firm is eligible.

The new rule distinguishes between complex and simple projects and establishes different procurement procedures for complex and simple projects. For both complex and simple projects, the Authority will first publicly advertise for expressions of interest (“EOIs”) for a project. The EOIs are then evaluated and ranked by a committee created by the Authority in accordance with advertised criteria. For simple projects, the review of the EOIs will then lead to price negotiation with the top ranked firm. For complex projects, the Authority will then issue a Request for Proposals to the top ranked firms.

- 1 The Request for Proposals will be evaluated and ranked according to the same criteria as was used to
- 2 evaluate the EOIs.

1 The new rule provides that the Authority will then request price proposals from the top ranked firms.
2 Using the fee proposals of all the top ranked firms as a guideline, the Authority will negotiate a fair and
3 reasonable fee with the highest ranked firm. If the Authority is unable to agree on a fair and reasonable
4 fee with the highest ranked firm, the Authority will terminate negotiations and undertake negotiations
5 with the next highest ranked firm.
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7

8 **Full text** of the new rule follows:
9

10 Procedure for prequalification and award of contracts for architectural, engineering and land surveying
11 services

12 (a) This section shall apply to contracts for architectural, engineering and land surveying services in
13 excess of \$25,000. The Authority may choose to apply this section to contracts below \$25,000 at its
14 sole discretion. The Authority may use procurement processes other than those prescribed in this
15 section if those processes have been approved by the Federal government or other State statute; or if
16 an emergency has been declared by the Executive Director of the Authority. Where a procurement
17 involves the proposed use of Federal funds, and Federal law, regulations or guidelines require a
18 procurement procedure other than those prescribed in this section, the Authority shall follow the
19 Federal procedures. All procedures provided for herein that are consistent with Federal requirements
20 shall be followed.
21

22 (b) The following words and terms, when used in this section, shall have the following meanings, unless
23 the context clearly indicates otherwise:

24 “Complex projects” means projects other than “simple projects”, and includes most projects
25 involving transportation planning or complex design, or any project having an estimated fee of over
26 \$500,000.

27 “Chief Engineer” means the Chief Engineer or the New Jersey Highway Authority.

28 “EOI” means an expression of interest from firms interested in performing professional architectural,
29 engineering and land surveying services for the Authority.

30 “Firm” means any individual, firm, partnership, corporation, association or other legal entity
31 permitted by law to provide professional architectural, engineering or land surveying services in this
32 State.

33 “Professional architectural, engineering and land surveying services” means those services, including
34 planning, environmental and construction inspection services required for the development and
35 construction of projects, within the scope of the practice of architecture, professional engineering or
36 professional land surveying as defined by laws of this State or those services performed by an
37 architect, professional engineer or professional land surveyor in connection with his or her professional
38 employment practice, and which are subject to N.J.S.A. 52:34-9.1 et seq.

39 “Review committee” means the committee assigned to review a contract for professional
40 architectural, engineering and land surveying services, which shall include at least three persons
41 designated by the Chief Engineer.

42 “Simple projects” means projects or other engineering services where the scope can be clearly
43 defined and is not likely to change during the course of the project where the estimated fee is
44 \$500,000 or less. Simple projects include, but are not limited to, bridge inspection projects,

1 supervision of construction projects and maintenance reserve projects with an estimated fee of
2 \$500,000 or less.

3
4 (c) Professional services prequalification requirements shall be as follows:

5 1. A firm interested in a contract for professional architectural, engineering or land surveying services
6 shall complete and file a "Professional Service Prequalification Questionnaire" ("PSPQ") with the
7 Authority. Firms qualified for a particular type of project based on the Authority's evaluation of the
8 PSPQs will be eligible for consideration when such projects are being contracted for by the Authority
9 without having to present their qualifications on a project-specific basis.

10 2. For the procurement of general consultants, rather than a project-specific procurement, the
11 procedures relating to prequalification of firms may be modified to address the needs and requirements
12 of the Authority.

13 3. Each firm shall identify on the PSPQ form each type of work for which the firm desires
14 prequalification. All PSPQ forms shall contain the following information:

- 15 i. Current and past projects undertaken by the firm;
16 ii. The nature of services provided on each project;
17 iii. The qualifications of the professionals employed by the firm; and
18 iv. Other information which the Authority may determine necessary to assess the firm's
19 qualifications.

20 4. A firm shall notify the Authority in writing of any substantial change in the information on its PSPQ
21 form when such change occurs. A firm shall have a current PSPQ on file with the Authority at the time
22 of advertisement of the EOI in order to be considered for a project. For purposes of this section, a
23 current PSPQ is one that has been on file with the Authority for no more than 24 months.

24
25 (d) Expression of interest (EOI) solicitation and/or advertisement shall be as follows:

26 1. An advertisement for EOIs shall be placed in an appropriate newspaper or journal, having a large
27 circulation in the State and/or advertised on the Authority's internet web-site, <http://gspkwy.state.nj.us>
28 or through other electronic means. Such advertisements shall be placed not less than seven days
29 preceding the date upon which the EOIs are to be received. The EOI solicitation shall identify the
30 scope of services required from the prequalified firms and the evaluation process to be used for the
31 project. When the Authority seeks to engage more than one firm through a single solicitation of EOIs,
32 the number of firms that the Authority intends to engage shall be identified in the
33 advertisement/solicitation of EOIs.

34 2. When general consultant services are needed, the Authority shall establish a list of criteria that
35 firms must meet in order to be sent an EOI for the general consultant contract. Firms that meet such
36 criteria shall be sent an EOI.

37
38 (e) Evaluation of EOIs shall be as follows:

39 1. Upon receipt of the EOIs, the Authority shall review the EOIs for completeness and shall reject
40 those EOIs which are incomplete. The Authority shall notify all firms whose EOIs are determined to
41 be incomplete in writing. For all projects, if fewer than three EOIs are deemed complete, the EOI
42 solicitation may be rewritten and/or resolicited, or the procurement may continue with less than three
43 firms, as determined by the Executive Director, in consultation with the Chief Engineer.

1 2. For simple projects, the technical evaluation process shall consist of the evaluation of EOIs in
2 accordance with the procedures set forth in this section. If three or more EOIs for a simple project are
3 deemed complete, the EOIs shall be evaluated by a review committee.

4 3. For complex projects, the evaluation of EOIs shall serve as a method by which to create a list of
5 firms that shall receive the requests for proposals (“RFP”) for the project. If four or fewer EOIs have
6 been deemed complete by the Authority, these firms shall receive the RFP and the Review Committee
7 will not conduct an evaluation of the EOIs as set forth below. If more than four EOIs have been
8 deemed complete, the EOIs shall be submitted to the Review Committee for review as set forth in (e)4
9 below.

10 4. The EOIs shall be ranked by the Review Committee on the basis of numerical scores resulting
11 from weighted rating factors. These factors will be weighted in proportion to their relative importance
12 on a project-by-project basis. The relative weight attributed to each rating factor for a particular
13 project and the ranking methodology shall be set forth in the EOI solicitation. In ranking the EOIs, the
14 Review Committee will consider criteria contained in the advertisement for the EOI, which may
15 include:

- 16 i. Understanding of project and the Authority needs;
- 17 ii. Approach to the project;
- 18 iii. Experience on similar projects;
- 19 iv. Credentials of the consultant’s project team;
- 20 v. Commitment to quality management
- 21 vi. Extent of New Jersey presence, including location of project office;
- 22 vii. Attainment of Minority Business Enterprise and Women Business Enterprise goals;
- 23 viii. Outstanding work with the Authority; and
- 24 ix. Any other factors specified in the Authority’s EOI solicitation.

25 5. For simple projects, once the Review Committee has ranked the EOIs, it shall require the top
26 three or more technically ranked firms, which number of firms shall be at the discretion of the
27 Authority, to provide their proposed fees in a separate envelope. The firms shall not be told of their
28 ranking position at this time. The selection process shall continue in the manner described in (g) below.
29 If a particular simple project warrants, the Chief Engineer may elect to issue an RFP and the contract
30 shall proceed in accordance with the process for complex projects.

31 6. For complex projects, after the evaluation and ranking of the EOIs, no fewer than the top three
32 ranked firms shall receive an RFP. All firms that are not to receive the RFP shall be notified in writing.

33 7. When the Authority is seeking to engage more than one firm through a single solicitation of EOIs,
34 following the Review Committee’s evaluation of the EOIs, it shall prepare a list of a sufficient number
35 of technically qualified firms to enable the Authority to engage the number of firms identified in the
36 request for EOIs. If the Review Committee is unable to prepare a list of technically qualified firms in a
37 sufficient number to negotiate with and engage the number of firms identified in the request for EOIs,
38 the Authority shall reduce the number of firms it is seeking to engage through the EOI, and/or re-solicit
39 the EOI in whole or in part. The Review Committee shall negotiate a contract with firms in the same
40 manner as other projects.

1 (f) Request for Proposals (RFPs) shall be evaluated as follows:

2 1. Responses to the RFP shall be comprised of the technical proposal and fee proposal. The firms
3 receiving the RFP shall be directed to submit a detailed fee proposal in a separate sealed envelope at
4 the time of submission of the technical proposal.

5 2. The Review Committee shall evaluate the technical proposals submitted to the Authority. The
6 Review Committee shall rank the technical proposals on the basis of numerical scores using the same
7 rating criteria as it is used to evaluate the EOIs. Other rating criteria may be considered, provided that
8 they are specified in the RFP. The relative weight attributed to each rating factor and the methodology
9 for ranking firms shall be set forth in the RFP.

10 3. The Review Committee shall normally require an interview and/or presentation by the firms with
11 the highest ranked proposals. The Chief Engineer, in his or her discretion, may waive this requirement
12 for a particular project. Subsequent, to the interview and/or presentation, the Review Committee shall
13 revisit its technical ranking of the firms, re-score as appropriate and shall thereupon recommend the
14 highest ranked firms to the Engineer, or the Executive Director if the Engineer was a member of the
15 Review Committee.

16
17 (g) Cost negotiation and final selection shall be as follows:

18 1. For all projects, upon reviewing the Review Committee's recommendation, the Chief Engineer or
19 the Executive Director shall either concur with the selections or direct the team to pursue additional
20 evaluation measures, consistent with the EOI solicitation or RFP, which shall be specified in writing by
21 the Chief Engineer or the Executive Director.

22 2. Once the selections are approved, the selected firms' fee proposals will be reviewed by the
23 Review Committee. The Executive Director may add one or more persons to the Review Committee
24 to assist in the negotiation process. Using the fee proposals as a guideline, the Review Committee shall
25 negotiate a fair and reasonable fee with the highest ranked firm, taking into consideration all relevant
26 factors, including, but not limited, the estimated value of the services to be rendered and the scope,
27 complexity, and professional nature thereof. If the Review Committee is unable to negotiate a fair and
28 reasonable fee with the highest ranked firm, it shall formally terminate negotiations and undertake
29 negotiations with the second highest ranked firm. Failing accord with the second highest ranked firm,
30 the Review Committee shall formally terminate negotiations and undertake negotiations with the third
31 highest ranked firm. If the Review Committee is unable to negotiate successfully with any of the three
32 highest ranked firms, it shall select additional professional firms in order of their competence and
33 qualifications and it shall continue negotiations in accordance with the procedure set forth herein until an
34 agreement is reached. The Executive Director, upon consultation with the Chief Engineer, may direct
35 the Review Committee to re-solicit the contract. Once a final fee is agreed upon, the Review
36 Committee shall make its recommendation to the Chief Engineer or the Executive Director, if the Chief
37 Engineer is a member of the Review Committee.

38 3. The Review Committee shall prepare a written report, for submission to the Chief Engineer,
39 outlining its recommendations and activities in reviewing, negotiating and selecting the recommended
40 firm. The Chief Engineer shall review the written report and the EOIs and/or responses to the RFP.
41 The Chief Engineer shall prepare written comments on the recommendation based on the review of
42 these documents. The Chief Engineer shall explain any disagreement with the recommendation.

1 4. The Chief Engineer shall submit the Review Committee's report and the Chief Engineer's
2 comments to the General Attorney to review. If the General Attorney has concluded the proper
3 procedures have been followed, the Review Committee's written report and comments of the Chief
4 Engineer shall be forwarded to the Executive Director.

5 5. If the Executive Director concurs with the recommendation, the Executive Director shall
6 recommend to the Commissioners of the Authority, in writing, that the firm be issued an Engineering
7 Contract, attaching a copy of the Review Committee's report and the comments of the Chief Engineer.

8 6. If the Executive Director is not satisfied with the recommendation, he or she may:

9 i. Instruct the Review Committee to submit further support for its recommendation;

10 ii. Direct the Review Committee to re-negotiate the fee;

11 iii. Direct re-examination of the technical criteria; or

12 iv. Instruct the Review Committee to re-solicit the contract.

13 7. The final decision regarding appointment of a firm shall rest solely with the Commissioners of the
14 Authority, subject to the Governor's right to reject such approval by exercise of the Governor's veto
15 authority. The memoranda or comments prepared by the Executive Director, the Chief Engineer, the
16 Review Committee and the Commissioner's Resolution will be considered public records for the
17 purposes of P.L. 1963, c. 73 (N.J.S.A. 47:1A-1) and retained as part of the contract documents.